Supreme Court, U.S.
FILED

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No: _____

In The

Supreme Court of the United States

Executor, Estate of Celia Kates,
Philip Barash, Beneficiary, Irving
G. Kates Trust, Sandra Barash

Petitioners,

v.

Northern Trust Bank of Florida, N.A.

Respondent.

On Petition for Writ of Certiorari
To the State of Florida, District Court
of Appeal, 4th District

PETITION FOR WRIT OF CERTIORARI

Executor, Philip Barash, pro se
Beneficiary, Sandra Barash, pro se
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QUESTIONS PRESENTED

1- Title 28, USCS 1446 (d) is specific in that "State Court shall proceed no further unless and until the case is remanded." When a state court proceeds even after having received proper notification of removal to Federal Court and then orders a trial, without notification to the petitioners, resulting in a judgment, this Court should deal with the issue of a state court's refusal to honor a specific federal statute which clearly represents the intent of Congress. In addition this Court has an obligation to enforce ***Adair Pipline Co v. Pipefitters Local Union Pension Fund*** EO Tenn, 70 FRD 530; also: ***Forsly v. State*** 258 NE 2d 616, 250 IND 173: also: ***Barrett v. Southern Railway Co.*** DC SC 1975, 68 FRD 413: also: ***People v. Wynn,*** 253 NW 2d 123, 73 Mich, App 713 Affd.; also: ***Harris v. State*** Ark App 1993, 850 5 W, 2d 41, Ark App 207, all of which ruled "Once a petition for removal is filed, state court shall proceed no further **and all proceedings in state court are void.**" Wherefore as the highest appeals court in the state of Florida that would hear the appeal has denied to enforce or obey this federal statute, this Court has the obligation to clarify for all time enforcement of this statute, supported by significant precedent by vacating the judgment of January 27, 2005 of the Florida Circuit Court based upon the fact that the case in question was removed to Federal Court on December 6, 2004 and not remanded until March 29, 2005?

2- Can a Florida Circuit Court order the payment of attorney fees against the petitioners for an action in the Federal Court in New York which was not against the same party who was a Plaintiff in the Florida action for which no federal statute allowing attorney fee awards was at issue. This order of March 29, 2006 did not allege that attorney fees were awarded pursuant to statutory authority nor was it

demonstrated that Congress clearly intended to allow such recovery. In the judgment of January 27, 2005, the Florida Circuit Court without explanation ordered that attorney fees from the New York Federal action, which was against another party, not the plaintiff in the Florida action, could be obtained by the non-party. It is a well established principle that attorney fees cannot be obtained in Federal Court unless federal statutory authority permits them. For a state court to denigrate this principle is a significant problem that this Court should address. "Absent Federal Statute or contractual authority each party bears his own legal fees in Federal Court" ***Lewis v. Federal Prison Industries Inc.*** CA 11 Fla 1992, 953 F. 2d 1277, 35 F. 3d 376 ; also: ***New Leadership Committee v. Davison*** 23 F. Supp. 2d 301; also:***Davenport v. Nassau County Sheriff's Dept.*** 22 F. Supp 2d 40; also: ***Barron's Educational Services Inc. v. Hitzik*** 987 F Supp 224; also: ***Foster v. Kings Park Central School District*** 174 FRD 19. This Court should issue a direct ruling, vacating the order for attorney fees, and offering clarification of this issue.

3- Congressional intent in the 1988 revision of USCS Title 28 section 1332 was to prevent a plaintiff from the engineering of the appointment of a defendant so situated as to prevent removal to Federal Court. Respondent filed an action for judicial accounting (subject of the judgment in question 1) citing Gloria Kates, a resident of Florida, as a defendant, but in January 2005, respondent filed a paper with the court affirming that she was a co-plaintiff entitled to attorney fees. Petitioners removed the "judicial accounting" case to Federal Court in New York wherein they had filed an action against the parent trust company, a Chicago based firm, under diversity of citizenship rules, alleging that the Florida action was fraudulent, the plaintiff was not the successor trustee of the trust, an sought consolidation of both actions. Although Federal Courts have generally averred the

removal of actions from state courts to Federal Courts in another state, this Court has not ruled on whether such removals when the foreign state clearly has no jurisdiction, to a state where jurisdiction is clear was the intent of Congress in the formation and restructuring of section 1332 or whether it was the intent of Congress to permit removals only in the state where the original action took place regardless of whether or not that action was undertaken fraudulently?

4- Can a national bank who has violated 12 CFR, Chapter 1, section 9.7 (d) and section 9.8 (a) which are both tantamount and required to become a trustee of a trust, and having executed no agreements between the beneficiaries of a trust and the trustee, enter a state court and remove funds from the trust for its own purposes to defray charges of mismanagement prior to those charges having been sought in any legal action, and can a national bank continue to remove legal fees to defend itself from actions initiated by itself against the beneficiaries of a trust absent any contract which is required by 12 CFR Chapter 1, sections 9.7.(d) and section 9.8 (a)?

5- The Florida appeals court for the 4th district denied to the Petitioner, Philip Barash, Executor of the Estate of Celia Kates participation in the appeal "without attorney". (Surely this Court realizes that the costs of engaging an attorney can be so excessive as to the accomplishment of purpose, that often rights of due process cannot be served.) Under the full faith and credit mandates of the United States Constitution, Article 4, sections 1 and 2, the State of New York appoints executors of an estate, not from the will document solely, but from the authority which the legislature has vested in the surrogate court. Court appointed, the laws of the state of New York specifically provide that a court appointed executor may conduct any legal action for the

estate, without attorney. The Petitioner's pleadings clearly informed the appellate court that the estate and the trust were New York Estates and a New York trust. Repeatedly asserted was the fact that a Florida court retained no jurisdiction over these matters. Although this Court has asserted that the sole rights of professionals can be regulated by state laws to be able to perform regular duties in a state, that is not the matter in question here. The New York executor, Philip Barash, was not coming to Florida to perform regular duties subject to the state licensing requirements, but under the full faith and credit mandates of the United States Constitution, he was entitled to enjoy the same rights in a Florida Court that he enjoyed in his state of New York. This court should make a definitive ruling upon this matter.

6- The Respondent pleaded that the probate exception to Federal Diversity Jurisdiction applied because they had brought an action for judicial accounting in a Florida probate court. However, it was both clear by the evidence and by a reading of the Florida "place of administration of a trust" statute that the trust in question was a New York Trust, could not be adjudicated in a Florida probate court, and because under New York Law, a trust may be adjudicated in a regular court of law (New York State Supreme Court) the probate exception cannot apply to trusts in the state of New York. The Florida probate court failed to properly rule upon the issue during its preparation of the judgment discussed in the question 1 herein, and the appellate court also failed to rule upon the issue. This court should make a definitive ruling on that issue.

7- Although a "treaty or reciprocity agreement" between states is not a stated federal issue, there is considerable precedent upon Federal review of issues that arise due to such reciprocity agreements. In this matter the states of

Florida and New York had entered into reciprocity agreements in the late 1970's (See ***Estate of Westfal*** 531 NYS 2d 81, 140 Misc. 2d 487.) that permitted Florida banks to become trustees of New York Trusts in New York and New York Banks to become trustees of Florida trusts in Florida. The agreement specifically provides that no New York Trust may be adjudicated in the state of Florida and no Florida trust may be adjudicated in the state of New York. Under New York Law, the trust in question, the Irving G. Kates New York Trust is a New York Trust even though his will was probated in Florida in 1989. (See: ***In Re Devine's Trust*** 228 NYS 2d 872, 34 Misc. 2d 817; also :***In Re Bauer's Trust*** 216 NYS 2d 920, 13 AD 2d 369.) This matter extends to the fact that no adjudication concerning the trust in question could have taken place in Florida. This Court is asked to rule on this matter of jurisdiction.

(i)

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

(This Court will note that the party, Northern Trust Bank of Florida, N.A. was the plaintiff in the Florida action in probate court. However, the party in the action in the United States District Court for the Eastern District of New York, referenced, was the Northern Trust Corporation, of Chicago, Illinois and personally as employees; William A. Osborne, CEO, Gwen Boykin, Vice President)

Pursuant to Rule 29.6, Northern Trust Corporation is a publicly traded company on the NASDAQ exchange under the stock symbol NTRS.

Northern Trust Bank of Florida, N.A. is a wholly owned subsidiary which claims jurisdiction in a Florida State Court even though as a national bank the correct forum under federal law is a federal court.

Northern Trust Corporation, and Northern Trust Bank of Florida, N.A. claim jurisdictional differences when they sue, but claim privity when sued, which constitutes an inconsistent and unenforceable position. (which relates to question 2, herein.)

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IN THE

Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully request that a writ of certiorari issue to review the judgments below:

The opinions of the highest Florida State Court to review the merits of appeal appears in Appendix A as follows:

Appendix - A- Per Curiam denial of appeal dated December 6, 2006 by the District Court of Appeal of the State of Florida, 4th District.

Petitioners filed a 24 page motion for rehearing timely filed on December 15, 2006, which had included under Florida Rules for Appellate Procedure a requirement that the Appeals Court issue opinions on the reasons for denial of the appeal so that an appeal could be formed to the Supreme Court of the State of Florida. The document Appendix B is a denial for rehearing dated January 9, 2007, and no opinion modifying the "Per Curiam" was tendered.

Appendix - C- On January 26, 2007 the Appeals Court issued a "Mandate" commanding that further appeals be undertaken under the rules of procedure and laws of the State of Florida.

Petitioners filed a 5 page omnibus motion citing the Federal Laws not reviewed or addressed including but not limited to the fact that in the wording of the Florida Constitution itself all courts were open to any person. By failing to offer opinions in the rejection of the

appeal, the Florida Supreme Court **will not review any "per curiam" rulings**, a fact well known to the 4th Appeals Court. Appendix D is a rejection of the Petitioners motion for rulings that could be appealed, dated February 12, 2007.

Wherefore based upon the above this matter is properly brought to this Court under Rul. 10 (c) in which a state court (the Circuit Court of Palm Beach County) has failed to rule upon several federal questions, and under appeal, the Appeals Court (4th District Court of Appeals) has also failed to rule upon the federal questions which had brought into repute the orders and judgments rendered by the lower court, which this Court is now asked to rule upon.

Under Rule 10 (c) and based upon the fact that the 4th Circuit Appeals Court with deliberation denied to the petitioners their right under the Florida Constitution to proceed to the Florida Supreme Court, but mainly based upon the incontrovertible facts as outlined in the "questions" herein, all of the issues which this Court is requested to review are "federal".

Nevertheless, the petitioners have taken this matter to the highest court available to them in the State of Florida and further review of "federal issues" remains available to them only in this Court.

None of the opinions reviewed above are published.

Appendix - E is the judgment of January 27, 2005 obtained without the participation of the Petitioners who were defendants, and while the entire case had been removed to Federal District Court and not remanded until March 29, 2005. The petitioners respectfully request that this judgment be vacated. (Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Probate Division.)

Appendix - F is the judgment of March 29, 2006 of the Circuit Court in Florida in which the Judgment

of January 27, 2005 provides for legal fees to be removed from the Irving G. Kates New York Trust by a Florida Court of no jurisdiction over the matter, and provides for the use of trust funds, which have been the personal assets of Sandra Barash, and not trust funds since the trust ended on August 10, 2004 with the death of the lifetime beneficiary, Celia Kates.

This order also provides for the continuation of the use of funds, now held hostage by the trustee in violation of New York Law, to pay legal fees in the New York Federal Action for a defendant, not the same as the plaintiff in the Florida action, and not represented by a New York Law Firm that has made any claim to representing the Florida plaintiff. This Court is respectfully requested to vacate a judgment on attorney fees of March 29, 2006.

Appendix - G- Order from the Florida Circuit Court upon a motion from the Respondent to ignore the removal to Federal Court, dated December 23, 2004. The issues of "question number 3" for this Court to review are embodied in this order. Petitioners were not advised of this motion nor advised of any hearing concerning this motion so that they could offer evidence in opposition. (Under federal statute, any orders of the Florida Circuit court from 12/6/04 through March 29, 2005 are null and void)

Appendix H order concerning question 5

None of these judgments or orders have been published.

JURISDICTION

The date upon which the highest court in the State of Florida decided the appeal was December 6, 2006, Appendix A.

A timely petition for rehearing was denied on January 9, 2007, Appendix B.

A "Mandate" to proceed with further appeal was served on January 26, 2007, Appendix C.

A five page motion to perfect appeal to the Florida Supreme Court was denied on February 12, 2007, Appendix D.

Wherefore the time to file appeal with this Court runs from 90 days from February 12, 2007 and the jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1- Title 28, USCS 1446 (d)

2- Congressional intent and federal precedents on award of attorney fees by state court against a federal court proceeding.

3- Title 28, USCS 1332 and Congressional intent of the 1988 revision.

4- Title 12, Code of Federal Regulations, Chapter 1, sections 9.7 (d) and 9.8 (a).

5- Constitution of the United States Article 4, sections 1 and 2.

6- Precedent rules concerning probate exception to Federal Diversity Jurisdiction require clarification.

7- Ruling on reciprocity agreements between states.

8- Effect of the fraudulent filing of lawsuits in an improper jurisdiction upon subsequent removal under title 28, USCS 1332.

STATEMENT OF THE CASE

Relevant background

In 1982 Irving G. Kates executed a will. Celia and Irving Kates had purchased property in Palm Beach, County Florida in 1972, but retained residency and citizenship in the state of New York at 31 the Birches, Roslyn Estates, Nassau County, New York 11577 until 1984.

The Florida apartment was occupied by them less than six months of the year which meant that they could not claim dual residency on New York State Tax returns.

In 1977, a Nassau County Municipal Court adjudged Irving G. Kates as suffering from Alzheimer's disease in relation to an automobile accident in which a police officer had issued two traffic summons, which the court dismissed because of the Alzheimer's disease directing that Mr. Kates never operate a motor vehicle again.

In late 1981, Irving Kates was confined to a nursing home as his Alzheimer's disease had progressed to the point that he could not be cared for at home. Despite this, upon advice of attorney Morris Engleberg, Celia Kates had a will drawn up which was for the purpose of diverting assets to their children without first becoming taxed upon the estate of Irving Kates. This was the Irving G. Kates Trust.

The will was signed on December 10, 1982 and was the document that created the Irving G. Kates New York Trust. Mr. Kates was taken from his nursing home to the office of the attorney, Engleberg, in the Town of Palm Beach to sign this will, however, Mr. Kates had not obtained a Florida driver license, lawyer Engleberg, when questioned in 2003

claimed that he did not know that Mr. Kates had Alzheimer's disease when he signed his will, nor that he had been brought from a nursing home to do so.

Although the will in its preamble dictates that Mr. Kates has as his address, Palm Beach, it does not state that Mr. Kates is a citizen of Florida.

On October 9, 2003 an official document from the Nassau County Board of Elections affirmed that Irving G. Kates of 31 the Birches in Roslyn Estates was a registered voter and citizen of Nassau County New York from 1960 through December 9, 1983.

Under New York Law, section 1501 of the Surrogate Procedure Act, any trust created by a document signed by a citizen of the state of New York remains a New York trust regardless of where his will is probated.

In addition, at his death in August 1988, the Irving G. Kates New York Trust was funded in New York, and was administered and managed in New York by Sandra Barash, Celia Kates and Smith Barney.

The trust provided that the lifetime beneficiary, Celia Kates could draw upon the principal of the trust for her support "regardless of her personal assets." From the funding of the trust, $ 500,000 at its inception, it had grown to $ 1,500,000 under the supervision of Smith Barney and Sandra Barash and Celia Kates. Gloria Kates, a remainder-man of the trust, was not consulted or involved in any way with the trust from its inception until December 2000.

In December of 2000 Celia Kates requested that she be able to use the funds in the trust for her support. This was based upon two facts: No money had ever been used from the trust, and Celia Kates had just turned over to Gloria Kates $ 2,500,000 which was her inheritance, to be enjoyed while Celia Kates still lived, under the provision that Celia Kates could ask for a return of that "inheritance" at any time prior to her death.

The trust provided that moneys could not be used by Celia Kates unless approved by the remainderman trustees, Sandra Barash and Gloria Kates. Sandra Barash agreed, but in a surprise to all concerned, Gloria Kates who had just received $ 2,500,000 refused to allow trust moneys to be used for the support of Celia Kates "because it would reduce her ultimate inheritance of those moneys as well."

Celia Kates was living in Palm Beach in January 2001 and proceeded to file a lawsuit against Gloria Kates to permit her to use the moneys in the trust. The court ruled in June of 2001 that Celia Kates could have reimbursement from the trust, and that in order to solve the problem of the Gloria Kates removal, Celia Kates was entitled to appoint a corporate successor trustee. After consultation with the Petitioners in this matter, Northern Trust Company of 50 South LaSalle Street, Chicago, Illinois, 60675 was appointed successor trustee by Celia Kates and there was to be a liaison officer of that bank who would direct reimbursements of trust funds from the office of that trust company in the town of Palm Beach, specifically at 440 Royal Palm Way.

At no time was it ever announced, concluded or in any way discussed that any other subsidiary of the Northern Trust Company was involved. In fact the building only has the words "Northern Trust" thereupon.

In March of 2001, Celia Kates moved back to New York for the purpose of having her apartment in Palm Beach renovated, and because of failing health, she was 94 years old, she decided to become a citizen of New York once again. Although Celia Kates had obtained a Florida driver license and became a citizen of Florida, Irving Kates never became a citizen of Florida, never voted in Florida and never obtained a Florida driver license. Of course, Irving Kates had been enjoined by a New York court from ever operating a motor vehicle again after 1977.

In July 2003, the United States Court of Appeals for

the Second Circuit, based upon a lawsuit to obtain payment of a promissory note owed to Irving Kates by Paul and Eric Siler, and based upon the fact that the note was funded in 1978, lost and found in 2001 by Celia Kates, and based upon allegations of Alzheimer's tolling the statute of limitations on the collection of the note, that court ruled that Irving Kates had Alzheimer's from 1979.

In August of 2003 Sandra Barash, the last standing executor of the Irving Kates prior will, dated 1958 with a codicil of 1962 removing Gloria Kates as co-executor (She had stolen a bankbook and $ 15,000 from Celia Kates) filed an action in the Florida Circuit Court to overturn the will of 1982 and to overturn the trust.

To the surprise of the Petitioners, Northern Trust Bank of Florida, N.A. appeared as a counterclaimant, although they had not been made a defendant in the action, and began to pursue a false claim against Sandra Barash. This entity, a subsidiary of the Northern Trust Corporation claimed that it had been appointed successor trustee. However, even based upon demands made to the court and to this "plaintiff" no successor trustee agreement ever appeared. It was then discovered that no agreement required under Federal, Florida or New York State law existed between the beneficiaries of the trust and the trustee, whoever the trustee was to be.

Despite this, and despite the fact that Celia Kates was not a party to this lawsuit, and despite the fact that on October 3, 2001, the Sandra Barash lawsuit to overturn the will was voluntarily dismissed, Northern Trust Bank of Florida, N.A., the respondent consumed $ 68,000 in legal fees and removed those fees from the Celia Kates portion of the Irving G. Kates Trust. (The trust had been broken into three subtrusts subject to a settlement agreement of September 2001, $ 600,000 Celia Kates, $ 375,000 Gloria Kates, $ 375,000 Sandra Barash.) This removal of funds was in all absolute terms illegal, because there was no contract or agree

ment between Northern Trust and the beneficiaries which clearly laid out terms and conditions of trust management and successor trusteeship.

In fact, the beneficiaries of the trust were unaware of any agreement at all having been presented or signed. In March of 2005, Northern Trust presented an investment management agreement which they claim had been signed in 2001. The beneficiaries did in fact sign only a signature page but never were shown any other page of the document. Even in the suspect cover sheet, handwritten no doubt in 2005, the trustees of the trust were listed as Celia Kates, with the co-trustees as Sandra Barash and Celia Kates.

The trust address on this cover sheet of July 2001 was Celia Kates, 2295 South Ocean Blvd, Palm Beach, Florida 33480. But, not a single statement of account had ever been mailed to that address because in July of 2001, Northern Trust was fully aware that Celia Kates had moved to New York and statements for her and Sandra Barash were only sent to 6 Serenite Lane, Muttontown, New Yorkl 11791. The Florida address for Celia Kates was never used, but in the preparation of the cover sheet in 2005, this fact must have been overlooked.

The trust ended with the death of Celia Kates at 7 PM on August 10, 2004. Under New York Law, the estate of the trustee ends, and the funds in the trust are the property of the beneficiaries. However, Northern Trust Bank of Florida,N.A now demanded that even though they had been informed of the mismanagement of the Celia Kates subtrust, (they had lost $ 300,000 of the $ 600,000 after 15 months of their management) they decided to demand the beneficiaries sign papers absolving them of all liability in the management of the Irving G. Kates New York Trust.

THE LAWSUIT BY THE RESPONDENT BEGINS

The respondent then decided to hold the funds of the beneficiaries hostage, refused to turn them over as required in compliance with New York Law, despite requests to do so and two months later, on October 30, 2004, filed a lawsuit for the purpose of exonerating the trustee of a trust in a Florida Court called an action for "judicial accounting".

The respondent filed fraudulent papers indicating that it had delivered monthly statements to the beneficiaries and that under Florida Law, that was the only thing that they needed to do to obtain a "judicial accounting judgment."

Under Florida Law, specifically Section 737.101 "the principal place of the administration of a trust is at the principal office of the trustee where the records are kept." In ***Duncan v. Walker*** 121 s. Ct 2120, 533 US 167, 150 LED 2d 251 This court has ruled "When interpreting statute, court's task is to construe the statutory language." "When interpreting a statute it is the court's duty to give effect to every clause and word."

Petitioners proved that the respondent in a "fraud upon the court" presented every single statement that had been sent to the beneficiaries without alerting the Florida Circuit Court that not a single statement had been produced or sent from Florida, and from its own records, presented by the Petitioners, but not by the respondent, not a single statement had been sent to the state of Florida.

Celia Kates and Sandra Barash received their statements from Chicago, in New York. Gloria Kates, although a resident of Florida, had appointed her son, Paul Siler as her trustee, and all statements of account went to him in Colorado. In fact, the Irving G. Kates New York Trust was managed for her trustee, Paul Siler in Colorado, and only he could affirm judicial accounting, which until this very day he has not done.

It could not be more clearly stated. A trust cannot be administered in Florida under the Florida statute if the records are kept on computers in Chicago, if no statements ever were sent to Florida or from Florida

In November 2003, Gwen Boykin, an officer of the Northern Trust Company under oath swore that she was a vice president of the Northern Trust Company whose office was located at 440 Royal Palm Way, Palm Beach Florida. On the NASDAQ information sheet available on the Internet Northern Trust Corporation clearly defines the Northern Trust Company as its trust management company with offices located in the Chicago financial district. In fact that is who the beneficiaries of the Irving G. Kates New York Trust had hired as successor trustee. (The respondent can produce no trust contract or agreement).

At the trial held without the Petitioners on January 27, 2005, (In fact the respondent filed a motion to deny the petitioners ability to attend) Gwen Boykin perjured herself by claiming that the Irving G. Kates New York Trust was administered in Florida.

At the hearing of February 17, 2006, Gwen Boykin in open court lied when she stated that "she always said Northern Trust Company" when she meant Northern Trust Bank of Florida, N.A.. Despite the clear evidence presented the circuit court of Florida failed to enforce Florida statute 737.101 when in fact the respondent falsely stated in pleadings that the statute affirmed that the trust had been administered in the state of Florida. The statute affirms quite the opposite!

Based upon the fact that under New York State's Surrogate Procedure Act a will may not be probated and an executor appointed unless and until a blood relative entitled to inheritance be removed from the case if that relative has been specifically disinherited. Gloria Kates had been in very specific terms, disinherited by Celia Kates. However, she

refused to comply with simple procedures to enable the process of probate to proceed. As a result, the executor of the Celia Kates New York Estate, Philip Barash, petitioner, was not appointed "temporary executor" until December 17, 2004 and permanent executor until March 2005. Philip Barash maintains court papers that are current as executor of the estate. Under New York law an executor appointed by a will has no powers until appointed by a Surrogate Court and may not be served with summons and complaint until appointed. The respondent served summons and complaint upon the executor on October 30, 2004. Under the laws of the State of Florida, summons and complaint may not be properly served unless they comply with the laws of the state in which service is made.

No service to the executor of an estate may take place unless and until he is appointed. That would have been on December 17, 2004. Wherefore since service was for all intents and purposes void, it could not serve as a date from which removal to Federal Court would be counted.

The Petitioners filed two motions to dismiss the action in the Florida "judicial accounting" against them for lack of jurisdiction. In a violation of the Florida Court Rules the respondent called for a hearing on the petitioners motion after he and the court had been notified in writing that on date for such hearing they could not appear. The Court is supposed to obtain agreement between opposing parties prior to scheduling a hearing. Secondly, Court rules do not provide that opposing parties can call hearings for motions that are not their own.

On November 18, 2004 the court held a hearing on the Petitioners motion to dismiss without them and denied the motion because we did not appear. This was a regular course of action for the respondent in the Florida Court.

And it was repeated relentlessly knowing that the 1,300 mile separation between a Florida Court and the

Petitioners would work unfairly in their favor.

The respondent had fraudulently appeared as the trustee of the trust claiming special rights to a Florida Court as the successor trustee a subsidiary, Northern Trust Bank of Florida, N.A. When the parent company was sued in Federal District Court in New York for mismanagement of the trust and other ultra vires acts, they claimed "privity" and the entitlement to attorney fees in the Florida Court even as the Florida subsidiary has never been sued by the Petitioners.

(This review sought by this Court is for relief of orders and judgments brought upon the petitioners as defendants)

Evidence makes the truth apparent. Northern Trust Bank of Florida, N.A. and its parent, Northern Trust Corporation, have in a desperate effort to prevent any trial on the merits of the mismanagement and ultra vires acts allegations against them, filed false documents in the "judicial accounting" action in the Circuit Court in Florida. The evidence is from their own documents: (a) no funds of the trust were ever in Florida (b) all payments to the lifetime trustee were made from Chicago (c) all statements of account came from Chicago to New York and Colorado (d) all notices of trust administration came from Chicago. (e) an officer of the Northern Trust Company falsified internal bank documents to indicate that the Northern Trust Bank of Florida, N.A. had been appointed "successor trustee" when not only was this not true, but no documents required by law defining the terms and conditions of the trust were ever executed.

The total liability that Northern Trust Corporation faces from these allegations against it, including possible punitive damages would exceed perhaps one million dollars.

Northern Trust Corporation has spent over $ 351,000 in legal fees, $ 300,000 stolen from the beneficiary of the Irving G. Kates New York Trust while under New York Law they ceased to be trustees after August 10, 2004.

Northern Trust Corporation has falsely alleged in other

actions against it that the "judicial accounting" action in Florida, during which the Petitioners were both motioned against appearance, not notified of the trial, and for which there was no revelations brought forward that the documents presented were tainted in that they failed to show that the statements sent came from Chicago to New York and to Colorado, never stopping in Florida so that administration in Florida could be affirmed under the Florida statute 737.101.

Nevertheless, the respondent claims that the Petitioners had a fair and ample opportunity to present their claims in the Florida Circuit Court, and should therefore be denied any adjudication against the respondent. Clearly, not only is that not the case, but the Florida Circuit court had no jurisdiction to even hear the case for "judicial accounting" and under the laws of the State of New York, the reciprocity treaty between the states, prevents a Florida Bank from using the Florida courts against the beneficiaries of a trust.

New York law is specific: The Estates, Powers, and Trusts Law Article 7 states:

Section 7.2.2 "When the estate of the trustee ceases." "When the purpose for which the trust was created, ceases, the estate of the trustee ceases" **Wherefore upon the death of Celia Kates on August 10, 2004, the trustee had no further power over the trust.** What did the respondent do? He held the trust hostage demanding that the beneficiaries sign a paper holding it harmless for what at that moment amounted to a loss liability due to mismanagement and to ultra vires acts of $ 445,000.

Section 7.4 (24)(d) "Commencement of the current beneficiary interest" (1) Interest of current beneficiary begins on the date specified in the governing trust instrument" That was the death of Celia Kates on August 10, 2004. Under the law, that money $ 320,000 belonged to Sandra Barash and could not be touched by the respondent. What did they do? They refused to turn over the money, filed a fraudulent law-

suit in Florida to get a court to approve their fraudulent acts and removed $ 300,000 from Sandra Barash's personal money without her consent to pay for their grossly inflated legal fees, all orchestrated by their attorney with the approval of the respondent.

Significant precedents support New York Law. ***In Re: Baldwin Estate*** 120 Misc 226, 198 NYS 86; also: ***Cary v. Carman*** 116 Misc 463, 190 NYS 193 "Trustee powers end with the conclusion of the trust."

"All trusts end when the prupose for which they have been created have been performed." ***In Re L'Hommedieu*** DC NY 138 F 708. 77 CCA 134: also : ***Hopkins v. Kent*** 145 NY 363, 40 NE 4; also :***Watkins v. Reynolds*** 123 NY 211, 25 NE 322; also: ***McLean v. Freeman*** 70 NY 81. (This Court will note that on page 346 of McKinneys EPTL New York Law, 50 additional precedents are listed which state the exact same thing.)

"Death of a beneficiary! A trust terminates when there ceases to be a beneficiary capable of calling for enforcement of the same." ***Levy v. Levy*** 853, 33 NY 97; also: ***In Re Miller's Will*** 257 NY 349, 178 NE 555; also : ***Pruyn v. Sears*** 96 Misc 200, 161 NYS 58; also: ***Wilcox v. Gilchrist*** 85 HUN 1, 32 NYS 608; also: ***Bliss v. Fosdick*** 76 HUN 508 27, NYS 1053.

In Garland v. Raunheim 29 AD 2d 383, 288 NYS 2d 417 an exact parallel to this matter exists. The ruling is: "Where a trust instrument directed payment of income to named persons for life, and on their death, property was to be divided among their children per stripes, on the death of the life beneficiary their issue immediately became vested with their interests and there were no further duties for a trustee to execute"

In the Matter of Wood 581 NYS 2d 405, 177 AD 2d 161. "Upon termination of a trust it is the duty of the trustee to turn over property in trust to the beneficiaries"

In addition this Court has ruled in ***United States v. White Mountain Apache Tribe*** 123 S Ct 1126, 537 US 465 155 LED 2d 40 "A fiduciary actually administering trust property may not allow it to fall into ruin on his watch, rather one of the fundamental common law duties of a trustee is to preserve and maintain trust assets" Evidence makes us see the truth. The respondent (and or the parent company) has taken the entire value of the trust belonging to the Petitioners including assets that belong to the estate of Celia Kates in a plain and patent violation of the law for the illegal purpose of using trust funds to pay for attorney fees for the sole and total benefit of the trustee. No precedent supports this.

To add insult to injury, every single statement issued by the respondent, from Chicago, list every single removal of funds to pay for legal fees of the trustee as "funds used for the benefit of the beneficiary".

This Court has dealt with the problem of correct jurisdiction in a dispute when a contract is in place. In this case no contract was ever executed either directing a place of dispute litigation or even asserting who the successor trustee was, or what his obligations and duties were. Knowing that they could not prevail on claiming that the Irving G. Kates New York Trust was a Florida Trust, the respondent has in fraud, alleged in a Florida circuit court, presenting documents that prove otherwise, that the trust was subject to administration in Florida, which it clearly was not..

The petitioners were always apprised of the fact that the Northern Trust Company of 50 South LaSalle Street, Chicago, Illinois maintained an office at 440 Royal Palm Way in Palm Beach, Florida. In fact the stationery used states at the bottom in very small print "Northern Trust Bank of Florida is a wholly owned subsidiary of the Northern Trust Corporation of Chicago".

This Court has ruled that "Even a forum selection in a contract may not be enforced because it was not freely

bargained for." ***The Bremen v. Zapata Offshore Company*** 407 US 1, 92 S. Ct 1907, 32 LED 2d 513 (1972): also: ***Carnival Cruise Lines Ins. v. Shute*** 111 S. Ct 1522 (1991)

Wherefore if no contract exists at all, entry into a Florida circuit court against beneficiaries of a New York Trust is clearly fraudulent, and falls afoul of this Court's rulings.

In Freeman v. Pitts 112 S. Ct 1430, 503 US 467, 118 LED 2d 108, on remand 979 F 2d 472 "Court's equity power lies in its inherent capacity to adjust remedies or redress injuries caused by unlawful action"

The respondent has done just exactly that. This Court has the power to redress the wrongs done.

In Hazel v. Atlas 322 US at 245, 645 Ct at 1001 "This historic power of equity to set aside fraudulently begotten judgments" "Moreover a court has the power to conduct an independent investigation in order to determine whether it has been the victim of a fraud."

This court has the power and perhaps the mandate to investigate all aspects of the acts of the respondent.

In addition a trustee may not file and action for his own benefit against a beneficiary or against the trust.

In Re Planche's Estate 65 Misc 2d 501, 1035, 315 NYS 2d 453, "A principle of trust administration which is strictly enforced is that a fiduciary owes undivided loyalty to the beneficiaries and cannot serve his own personal interests"

In Re Application of Schwartz 240 AD 2d 268, 660 NYS 2d 107. "Litigation costs paid with trust funds do not constitute administration costs, if the use of trust funds disadvantage any person interested in the trust, the trustee exposes himself to personal liability."

A trustee may not use trust funds, or funds owned by a beneficiary to absolve himself of allegation of ultra vires acts or prevent liability to himself.

In Re Estate of Hunter 190 Misc 2d 593, 739 NYS 2d 916 "A trust accounting decree may be vacated is obtained through fraud."

In Re Vebeliunas 252 BR 878 "A trustee must bring suit on behalf of the trust and may not bring suit on behalf of the trustee." "A suit against beneficiaries cannot be construed as a suit on behalf of the trust."

In Re Hawwa 779 NYS 2d 578, 9 AD, 3d 362 "Where a trustee expends legal fees to protect its own personal interests, such fees cannot be charged to the trust."

New York State Estates, Powers, and Trusts Law also states in Article 7, section 7.1 "When right to possession exists" "Upon termination of a trust, title in full vests at once in the remainderman without any conveyance or other necessary act on part of the trustee."

The respondent had no right to file any action for judicial accounting, or refuse to turn over trust assets.

"Under New York Law, as a general matter, only a beneficiary of a trust has the right to sue for judicial accounting" ***Lloyds American Trust Fund*** 954 F. Supp 656, 1997 WL 458739.

The fraudulent and ultra vires acts of the respondent are subject to punitive damages.

"Under the traditional principles of trust law, beneficiary may recover punitive damages from breach of fiduciary duty. ***Town of Evans v. Catalino*** 451 NYS 2d 523, 88 AD 2d 780.

PURSUANT TO RULE 14 (g) (i) RAISING OF FEDERAL QUESTIONS, HOW AND WHEN RAISED.

In order to establish the chronological events that led to the Federal Statute involvement it is necessary to return to the first events of these matters which will relate to the question number 3 herein.

Northern Trust Bank of Florida, N.A. entered an action begun by the Petitioner in Florida to overturn the will of her father since he had been adjudicated with Alzheimer's by a New York District Court fully five years before he signed his 1982 will which created the Irving G. Kates New York Trust.

Although they had no right to enter the action in a Florida Court as a counterclaimer, but must have entered as a intervenor, and although in an open court hearing during which the Petitioner was hampered by having to appear on the telephone, the Petitioner objected to the filing of a counterclaim by a non-party, non defendant, Judge Lupo asked Mr Pressley "What is the basis for your counterclaim?

Mr Pressley then falsely stated "They filed a lawsuit and we counterclaimed." The Petitioner then stated, "We did not sue Northern Trust, we petitioned to overturn the will." This took place on October 2, 2003.

Prior to that hearing the Petitioners filed a motion for a restraining order against Northern Trust Bank of Florida, N.A. entry into the case, because they were not the appointed successor trustee. The motion was denied without hearing.

The Petitioners despite repeated efforts to obtain documentary evidence that would support their claim, were denied discovery, and over the next few years only developed the evidence now in their possession by a painstaking review of the personal documents of Celia Kates who had passed away on August 10, 2004.

A key document was never presented until March 2005 by the respondent, and there is reason to believe that the cover page of that document was in fact created in 2005, not in 2001 as alleged.

On October 20, 2003 the Petitioners filed a motion to dismiss the Northern Trust Bank of Florida, N.A. counter-claim under FRCP Rule 1.061, title VI Chapter 47, improper venue, but the motion was not ruled upon and on November 17, 2003, Judge Lupo ended the action by ruling that it must go to mediation.

Instead of honoring the order for mediation, Northern Trust Bank of Florida, N.A. decided that it would refuse to pay for Celia Kates' support, in defiance of trust terms and that they would extort $ 33,000 from her to satisfy what proved to be a never adjudicated and false claim under the counterclaim.

No action took place until Judge Lupo retired in June 2004. At that point, the respondent, continued legal action, and had the new judge, who had been placed to take over the probate division after having spent her prior years in the juvenile division of the Fifteenth Judicial Circuit. On August 2, 2004, a series of orders were issued without a hearing all petitioners motions,and motions to dismiss denied

This background is essential to understand that in December of 2004, after the respondent had filed its fraudulent action for judicial accounting in Florida, the respondent called for a hearing, once again relegating the petitioners to the telephone, to set a trial date for their judicial accounting.

Petitioners noted that the hearing was set for December 9, 2004, and filed three motions to be heard. The most essential motion was to deny a trial date until there had been an opportunity for discovery, under Florida rules.

Without warning, on the morning of December 6, 2004, a Monday, the telephone rang and Judge Martin was on the phone and Northern Trust Bank of Florida, N.A. was in the courtroom seeking a trial date.

The petitioners asked if the motions set for the hearing date of December 9, 2004, which had been set by the court would be ruled upon? Judge Martin stated that she did not have the motions because the hearing date had been changed to December 6, 2004 and there would be no hearing on December 9, 2004, no petitioners motions to be heard.

The petitioners then asked for a stay of the trial date so that they could obtain discovery for which the rules of court permitted, and which were in fact their right.

The stay was denied, and Judge Martin stated that she would set a trial date, but did not set that date during the telephone hearing.

At this point the Petitioners stated to the court that the case would be removed that day to Federal Court in New York because the respondent was not appointed or defacto successor trustee, and jurisdiction did not exist in Florida.

Judge Martin responded "You are going to remove the whole case?"

The petitioners stated "Yes, the whole case!".

The essence of the matter regarding question 3, herein is firstly explained on page 3, of the document, District Court of Appeal of the State of Florida, Case No: 4DO5-831, Respondent Answer Brief dated July 13, 2005, under the hand of the respondent attorney James G. Pressly, Jr, Esquire (last paragraph) "Because Gloria Kates is a beneficiary of the trust she was named a Defendant (because she is a Florida Resident) Gloria filed an answer admitting all of the allegations of the Complaint for judicial accounting (she agreed to hold the respondent harmless prior to their action). Gloria also filed a motion for attorney fees because she was not really a defendant but a co-plaintiff. (The court granted her attorney fees from the Sandra Barash sub-trust even though that subtrust was her personal funds on August 10, 2004 and the trustee had no right to hold those funds.)

The 1988 Congressional rewrite of Title 28, section 1332 was to prevent a plaintiff from engineering a false defendant to prevent removal to a federal court.

In Balt for Cooperatives v. Farmers Cheese Corp CA 3 (PA) 1978, 583 F. 2d 104 also: ***Gilchirst v. Strong*** DC Okla 1969, 299 F. Supp 804 ; also: ***Asher V. Pacific Power & Light Co.*** DC Cal 1965, 249 F. Supp 671 "Congress adopted a policy of opening doors of Federal Courts to all diversity cases involving jurisdictional amount to assure suitors from foreign state of impartial & neutral forum."

Petitioners had evidence and had alleged that the was not the appointed or defacto successor trustee of the trust. That jurisdiction in a Florida Court was flawed. That a New York Trust may only be adjudicated in New York under New York Law. That New York Law does not permit judicial accounting action by a trustee against beneficiaries, and that service of summons and complaint against an executor in New York prior to his Court appointment is illegal and improper service.

In any event, the 1988 revision of section 1332 provided that is a false defendant was used to deter removal to a federal court, the removal could take place not 30 days from the filing of the action, but one year thereafter.

This Court is asked to rule upon the following points:

If a lawsuit is fraudulently filed in a foreign state, can it be removed to another state which has proper jurisdiction.

Two precedents which do not deal with the issue of removal from one state to another, however, imply that such action is proper because "Removal from state court to Federal Court is appropriate when federal court would have had original jurisdiction of the plaintiff's action at the time of removal. A case which originally may be brought in Federal District Court is generally removable upon petition." ***PAAC v. Rizzo*** CA 3 (PA) 1974, 502 F 2d 306.; also: ***Stanlet v. Exxon Corp*** ED (PA) 1993, 824 F. Supp 52.

This Court should make a definitive ruling on whether or not Congress intended that removal to Federal Court must also consider that if a foreign state is the first state of action, when fraudulent, removal is proper to a federal court in the state where the action should have been brought.

The foregoing sets the stage for this Court's consideration of Question 1, wherein despite removal it was in the best interest of the respondent to file a motion with

the Florida circuit court to continue the lawsuit despite the removal. A Florida precedent was brought into play in which "if a removal appears on its surface to be subject to remand' the Florida Court may continue anyway." (in defiance of Federal Law.)(Appendix G)

In a ruling by the Office of the Comptroller of the Currency, referenced as 1992 WL 486347 under paragraph III "Federal Preemption" (This Court is reminded that the respondent is a national bank under oath to obey federal law) "The doctrine of Federal Preemption is based upon the supremacy clause of the United States Constitution (Article 6, clause 2) "This Constitution and the laws of the United States shall be the supreme law of the land..any Laws of any State to the contrary..notwithstanding."

" These principles are sanctioned by repeated adjudication in this Court" ***McClellan v. Chapman*** 164 US 347, 357 also: ***Davis v. Elmira Savings Bank*** 161 US 275, 283.

Judge Martin of the Florida Circuit Court stated in an order which continued the action that had been removed that "there was no colorable claim in the Federal District Court in New York" that Gloria Kates was a resident of Florida and so removal was improper, that more than 30 days had gone by after summons and complaint had been served (improper service not counted) and that a Florida precedent permitted her to proceed in defiance of Federal Law. (Appendix G)

The petitioners were never informed of the hearing that took place upon the motion of the respondent to have the Florida action continued. The petitioners were never noticed of deposition hearings set up by the respondent, who knew that the petitioners would not receive notice, and then the respondent filed motions to prevent the petitioners from appearing at the trial now set for January 27, 2005 because they did not appear for deposition hearings. (Attorney for the respondent used this "trick of court" again try to prevent an evidentiary hearing to enforce federal issues from taking

place, on February 17, 2006.) The petitioners were never noticed of the trial, and had believed that failing a remand, no trial in Florida could take place.

This Court should make a definitive ruling on what a State Court may not do when a case has been removed.

Questions 1 and 2 involve the issue detailed above and the reversal of the judgment of January 27, 2005 was sought in an Appeal to the State of Florida Appeals Court for the 4th District in case no 4DO5-831 filed by the Petitioners May 10, 2005 which outlined that Federal Law was being broken by continuing a case removed to a Federal District Court and that under significant Federal precedents (Federal law is supreme) and under the American Rule, attorney fees may not be awarded in Federal actions if there is no Federal statute allowing such award.

On January 5, 2006, Petitioners dismissed the action in the Fourth District because they had obtained additional evidence of the frauds of the respondent and applied to the Florida Circuit Court for a hearing pursuant to rule 1.540 "Relief from a judgment based upon newly discovered evidence and fraud"

An all day evidentiary hearing was conducted by the Petitioners in which proofs were offered that (a) the respondent was not the successor trustee (b) all trust administration had taken place in Chicago, (c) Northern Trust Company was a Chicago based trust company (d) Gwen Boykin, VP of that bank had so sworn (e) Gwen Boykin had signed for the transfer of assets from New York to Chicago as VP Northern Trust Company (f) No statements of account had ever come from Florida or been sent to Florida (g) Northern Trust had never executed contracts or agreements to become successor trustee (h) the Irving G. Kates Trust was a New York Trust and could not be adjudicated in a Florida Court.(i) summons and complaint in the judicial accounting case had been

served in violation of Florida and New York law. (j) the only agreement ever signed was an investment management agreement in which Celia Kates was the trustee, Gloria Kates and Sandra Barash co trustees (k) sworn testimony from Gloria Kates, resident of Florida, that she had never received a single statement of account for the trust.

Petitioners moved the court for a written summary and the motion was denied. Without any examination of the 41 exhibits presented to the Court affirming the facts, Judge Martin ruled against the petitioners, without a moments hesitation and without due deliberation of the evidence which had been presented, without reference to federal issue.

Immediately thereafter the respondent set a hearing for attorney fees. Petitioners filed a brief in opposition with 22 exhibits proving that attorney fees should not be allowed because there was no jurisdiction for the action against a New York Trust and there was no basis for attorney fees to be awarded in a Florida Court for an action in the Federal District Court in New York.

On March 29, 2006 the court awarded attorney fees in violation of Federal Law and multiple federal precedents. (Appendix F)

On May 26, 2006, Petitioners filed a motion to address the federal issues and dismiss the judgments which are referenced herein. The Court ignored and failed to rule upon what the Petitioners sought in regard to federal issues.

On April 26, 2006 an appeal was filed with the District Court of Appeal of the State of Florida, 4th District. The reliefs sought was to vacate the January 27, 2005 judgment based on no jurisdiction for a New York Trust, the vacate of the judgment for attorney fees in violation of Federal Law, to vacate an order denying an evidentiary hearing for ultra vires acts of the respondent in a case that remains open, to also vacate an order for attorney fees to Gloria Kates a beneficiary for the trust .(Case no: 4DO6-1679)

(Based upon its own ruling in ***Frymer v. Brettschneider*** 710 So 2d 10 "In general legal fees and other expenses of a beneficiary will only be allowed out of trust funds if the trust estate and other beneficiaries are benefited" the 4th District failed to uphold its own ruling, and refused to give reasons for its per curiam rulings)

On June 27, 2006 Petitioners filed a 45 page initial brief, containing 65 precedents proving their case and with 34 documents of evidence, referencing all of the federal issues herein.

Petitioner's filed a reply brief reasserting the issues during August 2006. However, the Appeals Court refused to issue any ruling explaining their position which in effect is a denial that they even considered any federal issues.

On December 12, 2006 the Petitioners filed a 24 page motion for rehearing contained thereon that pursuant to the Florida Rules of Appellate Procedure Rule 9.330, the appeals court was to serve written opinions instead of a per curiam so that an appeal to the Florida Supreme Court could perfect.

This document reasserted the federal issues.
The Appeals Court refused to comply (Appendix B)

Petitioners filed an additional motion seeking to have an opinion on any issues, also referencing the federal issues so that appeal may be perfected to the Florida Supreme Court, a further denial of compliance was received, dated February 12, 2007. (Appendix D)

This Court is further apprised that the Florida Circuit Court and the Florida Appeals Court when asked to enforce and rule upon the federal issues failed to do so and such federal issues were ignored, and both courts failed to rule upon them or even take them into the consideration of their rulings.

REASONS FOR GRANTING THE PETITION

Petitioners believe that the 7 questions presented to this most astute Court in the land are of sufficient public importance that a definitive ruling of precedent from this Court would be not only of benefit to the petitioners, but to those who will follow in the various courts of the land, and who will then have direct and sufficient guidance upon the issues presented herein.

CONCLUSION

The petition for a writ of certiorari should be granted.

Prepared at Muttontown, New York on this 27th day of February 2007 and respectfully submitted to this Court.

Philip Barash

Executor, Estate of Celia Kates
Philip Barash, pro se.

Sandra Barash

Beneficiary, Irving G. Kates
New York Trust
Sandra Barash, pro se.
6 Serenite Lane
Muttontown, New York 11791
516-621-8665

APPENDIX A

District Court of Appeal of the State of Florida
Fourth District
July Term 2006

PHILIP BARASH, SANDRA BARASH
Appellants
v.
NORTHERN TRUST BANK OF FLORIDA, N.A.
Appellee

No. 4DO6-1679

December 6, 2006

PER CURIAM,

Affirmed.

Gunther, Warner and Farmer, J.J. concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County, Karen L. Martin, Judge: L.T. Case No. 502005CP004511XXXXMB and 502003CP00 3317XXTRIB.

Sandra Barash and Philip Barash, Muttontown, New York pro se.

James G. Pressly, Jr. of Pressly & Pressly, P.A., West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

January 9, 2007

CASE NO: 4DO6-1679
L.T. No: 502004CP004511 XXXXMB

PHILIP BARASH AND SANDRA BARASH	v.	NORTHERN TRUST BANK OF FLORIDA, N.A.
Appellant/Petitioners		Appellee/Respondent

BY ORDER OF THE COURT:

ORDERED that appellants motion dated December 15, 2006 for rehearing is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:
Sandra Barash, Philip Barash, Julie Ferguson
James G. Pressly. Jr

ct

/s/ Marilyn Beuttenmuller, Clerk

SEAL

MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

APPENDIX C

M A N D A T E

from

This cause having been brought to the Court by appeal: and after due consideration by the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable W. MATTHEW STEVENSON, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of said Court at West Palm Beach, Florida on this day.

DATE: January 26, 2007
CASE NO: 4DO6-1679
COUNTY OF ORIGIN: Palm Beach
T.C. CASE NO: 502004CP004511XXXXMB
502003CP003317XXTRIB
STYLE: PHILIP BARASH AND SANDRA BARASH v. NORTHERN TRUST BANK OF FLORIDA N.A. ET AL

SEAL

/s/ Marilyn Beuttenmuller
MARILYN BEUTTENMULLER
Clerk, Fourth District Court of Appeal

ORIGINAL TO: Sharon H. Bock, Clerk
cc: Sandra Barash, Philip Barash, Julie Ferguson, James G. Pressly, Jr.
jb

APPENDIX D

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL. 33402

February 12, 2007

CASE NO: 4DO6-1679
L.T. No: 502004CP004511 XXXXMB

PHILIP BARASH AND SANDRA BARASH v. NORTHERN TRUST BANK OF FLORIDA, N.A., ET AL

Appellant/Petitioners Appellee/Respondent

BY ORDER OF THE COURT:

ORDERED that appellants omnibus motion filed February 5, 2007 is hereby stricken as frivolous and unauthorized.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Sandra Barash, Philip Barash, Julie Ferguson
James G. Pressly, Jr.

ct

/s/ Marilyn Beuttenmuller SEAL
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

APPENDIX E

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH,
COUNTY, FLORIDA

IN: RE TRUST UNDER THE
WILL OF IRVING G. KATES PROBATE DIVISION

_____/

NORTHERN TRUST BANK OF
FLORIDA, N.A., Trustee CASE: 502004CP004511
Plaintiff, XXXXMB

vs.

ESTATE OF CELIA KATES
By its Executor, SANDRA BARASH
and GLORIA KATES,

Defendants.

_____/

FINAL JUDGMENT

This cause came for trial on January 27, 2005. Northern Trust Bank of Florida, N.A., ("Northern Trust") trustee, the Plaintiff, was represented by Pressly & Pressly, P.A. and Defendant Gloria Kates was represented by Page, Mrachek, Fitzgerald & Rose, P.A. Sandra Barash and Philip Barash did not appear. They were properly noticed for the trial

_____

1- Although Gloria Kates was nominally a Defendant, she admitted the allegations of the Complaint and for all practical purposes became a Co-Plaintiff. Neither Sandra Barash nor Philip Barash as Executor/Temporary of the Estate of Celia Kates filed a pretrial stipulation nor attended nor participated in the trial. Plaintiff noticed Sandra Barash for her deposition on January 5, 2005, she failed to appear, and a Notice of Non-Appearance was filed (D.E. # 70)

Pleadings

The Complaint filed by Northern Trust Bank of Florida N.A., Trustee requested the Court to settle and approve the accounts of the Trustee, award attorney fees to the Plaintiff and allocate the fees pursuant to 737.2053 (3) Fla. Stat if deemed appropriate by the Court. and direct distribution of the remaining assets in the Trust, and discharge the trustee from liability as provided in 737.201 (1)(b) Fla. Stat. Beneficiary Gloria Kates admitted the allegations of the Complaint and joined in the request that the relief be granted \and has assrted that the fees of the Trustee's counsel should be allocated against Sandra Barash's share of the Trust.

Sandra Barash and Philip Barash filed an answer not in compliance with the Florida Rules of Civil Procedure and failed to deny allegations in the complaint and thus all factual allegations in the complaint are deemed admitted. See Heingold Commodities Inc v. S. Dale Trude 508 So 2d 1327 Fla 4th DCA 1987. Nonetheless Plaintiff did not rely on the deemed admission and offered evidence and proof of all of Plaintiff's claims.

Defendants Sandra Barash and Philip Barash moved to dismiss the Complaint on grounds of venue and jurisdiction. The Court denied the motion without pejudice and permitted the Barashs to raised the issue at trial. (D.E. # 27) The Court now denies the motion to dismiss with prejudice. Jurisdiction amd venue were established at trial.

The Trial

At the trial on January 27, 2005 Northern Trust adduced into evidence accountings from the inception of the trust in September 2001 through the date of the trial; the testimony of Gwendolyn Boykin; and the Court took judicial notice of the pleadings filed by the Barashs in the Federal District Court in New York.

Attorney Fees

The Court received documentary evidence, fact testimony, and expert witness testimony from Willam E.

Boyes, Esquire with respect to the fees and costs of counsel for the Plaintiff, Northern Trust and Defendant, Gloria Kates by way of deposition testimony.

Rulings

Having considered the evidence and heard arguments of counsel it is ordered that judgment is entered for the Plaintiff, Northern Trust Bankof Florida, N.A., trustee, and for Gloria Kates (nominal defendant) and against Sandra Barash and Philip Barash as temporary executor of the Estate of Celia Kates. The Court finds and enters judgment as follows:

1- The Barashes Motion to Dismiss on grounds of venue and jurisdiction is denied. The principal place of administration of the Trust was Palm Beach County, Florida for the entire time which Northern Trust served as Trustee and thus this Court has venue and jurisdiction pursuant to 737.101; 737.202 and 737.201 Fla. Stat.

2- The accountings for the period from the time that Northern Trust took office as trustee, September 2001 through February 2004 were properly served on the beneficiaries are a deemed approved pursuant to 737.307 Fla Stat. In addition the Court approves and settles the accountings submitted into evidence at trial for this period.

3- The accounting for the period from February 2004 as supplemented up to the day of trial is approved and settled.

4- Plaintiff, Northern Trust is fully discharged and released from liability for its services as Trustee for the period from the date Northern Trust took office as trustee to the date of distribution of the assets of the trust as directed in the Final Judgment and shall go hence without day.

5- The Court approves and awards attorney fees for Pressly & Pressly to be paid from the corpus of the trust for the period August 16, 2003 through July 31, 2004 and finds that 145 hours expended by the law firm are reasonable at a blended hourly rate of $ 290 an hour for a total of $ 42,000

and costs of $ 3,000.

6- The Court approves and awards the attorney fees for Pressly & Pressly, P.A. to be paid from the corpus of the trust for the period August 1, 2004 through the date of trial and finds that 120 hours expended by the law firm are reasonable at a blended rate of $ 313 an hour for a total of $ 38,000 and costs of $ 3,300.

7- The Court awards expert witness fees to William E. Boyes in the amount of $ 1,225.

8- The Court finds that Page, Mrachek, Fitzgerald & Rose, P.A. have provided services to the trust and are entitled to an award of attorney's fees.

9- The Court approves and awards the attorney fees for Page, Mrachek, Fotzgerald & Rose, P.A. to be paid from the corpus of the trust for the period October 7, 2004 through the date of trial and finds that 31.6 hours expended by the law firm are reasonable, the hourly rates charged by Page, Mrachek, Fitzgerald & Rose, P.A. are reasonable for a total of $ 5,836.

10- Pursuant to section 737.2053 (3) Fla. Stat. the Court finds that the attorney fees for Northern Trust and Gloria Kates counsel and costs incurred by Northern Trust counsel shall be paid from the Sandra Barash Sub-Trust.

11- After payment of attorney fees for Northern Trust's counsel and Gloria Kates'counsel and final trustee's fees and expenses and allocation of same, Northern trust shall distribute the remaining assets of the trust as follows:

A-,The Celia Kates subtrust shall be distributed forthwith, one half to Gloria Kates and one half to Sandra Barash, each of whom shall furnish the appropriate transfer or wire instructions to Northern Trust and Northern Trust shall have no obligation to make distribution until receipt of same.

B- With regard to the Gloria Kates subtrust, this court previously granted Gloria Kates' Motion for Partial Distribution and Northern Trust shall continue to hold the remaining

amount in the Gloria Kates Sub-Trust pursuant to that order (D.E. # 67)

C- With regard to the Sandra Barash Sub-Trust, Northern Trust is directed to liquidate securities sufficient to pay the attorney fees awarded in this action and allocated to Sandra's subtrust plus a additional $ 100,000. That additional $ 100,000 in cash shall be retained by Northern Trust and invested in short term U.S. Treasury Bills or an equivalent money market fund until final deposition of any claims by Northern Trust for reimbursement of attorney fees and costs incurred by Northern Trust as determined and awarded by this Court with respect to fees incurred by Northern Trust in the United States District Court for the Eastern District of New York, Case No CV 04-5153 and the United States District Court for the Eastern District of New York, Case No CV 04-5295. The remaining assets in the Sandra Barash Sub-Trust shall be transferred to Sandra Barash pursuant to transfer and/or wire instructions to be furnished by Sandra Barash and Northern Trust shall have no obligation to make distribution until receipt of same.

9- The Court reserves jurisdiction for enforcement of the terms of this judgment and for the entry of further orders as described herein.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida on this 27th day of January 2005

/s/ Karen L. Martin
KAREN MARTIN
Circuit Court Judge

*prior to the entry of this order, the court thoroughly considered the evidence. This order reflects the courts findings based on the evidence. (*handwritten)

APPENDIX F

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH,
COUNTY, FLORIDA

IN RE: TRUST UNDER THE
WILL OF IRVING KATES

_____/ PROBATE DIVISION

NORTHERN TRUST BANK
OF FLORIDA, N.A. Trustee, CASE: 502004CP004511
Plaintiff, XXXXMB

vs.

ESTATE OF CELIA KATES
By its Executor, SANDRA BARASH,
GLORIA KATES,
Defendants.

_____/

JUDGMENT ON ATTORNEY FEES AND COSTS

On March 21, 2006 this Court conducted an evidentiary hearing on Northern Trust Bank of Florida, N.A. Trustee's Amended Motion Re Attorney Fees and Costs and Other Relief.

The Court heard fact and other testimony, received documentary evidence, and heard arguments of counsel and of Philip Barash, pro se.

The Court finds in favor of Northern Trust Bank of Florida, N.A. and Gloria Kates and against Philip and Sandra Barash. The Court finds that reasonable attorney fees charge able to the trust pursuant to 737.2035 (2) and (3): 737.204 (4), and 737. 627 (1) and (2), Fla. Stat. for Pressly & Pressly, P.A. are $ 59,665 computed as follows:

Reasonable number of hours 205
Reasonable hourly blend $ 291
Lodestar amount $ 59,665
Reasonable costs are $ 2,664

The Court finds that reasonable fees for Katten, Muchin, Rosenman, LLP are $ 138,516 computed as follows pursuant to 737.2035 (2) and (3): 737.204 (4) and 737.627(1) and (2) Fla. Stat. are chargeable to the Trust:

Reasonable number of hours 388
Reasonable blended hourly rate $ 357
Lodestar amount $ 138,516
Reasonable costs $ 767

The Court awards Northern Trust expert witness William Boyes, Esquire, compensation in the amount of $ 5,250, computed at 15 reasonable hours at $ 350 reasonable hourly rate.

Based upon the evidence presented, the Court finds that all of the attorney fees and costs of Pressly & Pressly, P.A. and Katten, Muchin, Rosenman LLP must be charged to the share of Sandra Barash and no part of these fees and costs should be charged to Gloria Kates.

The Court reserves jurisdiction to award further fees and costs for counsel for Northern Trust Bank of Florida, N.A. and to enter further orders with respect to final distribution of the trust assets.

This judgment entered in West Palm Beach, Palm Beach County, Florida on this 29th day of March 2006.

/s/ Karen L. Martin
KAREN L. MARTIN
Circuit Court Judge

(Note: The fees for Katten, Muchin, Rosenman are for the Federal Lawsuit in New York and cannot be justified by Florida Statutes.)

APPENDIX G

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

IN RE: TRUST UNDER WILL
OF IRVING G. KATES PROBATE DIVISION
_____/

NORTHERN TRUST BANK
OF FLORIDA, N.A. Trustee CASE: 502004CP004511
XXXXMB

Plaintiff,

vs.

ESTATE OF CELIA KATES By
its Executor, SANDRA BARASH,
and GLORIA KATES,

Defendants.
_____/

ORDER ON NORTHERN TRUST BANK OF FLORIDA, N.A.'S MOTION TO QUASH AND DIRECT CLERK

Defendant's Motion to Quash **(* this order is invalid on its face because the Defendants filed no such motion. Motion was filed by the Plaintiff.)** And to Direct Clerk came on for hearing the 23rd day of December, 2004 and **(* Defendant's were not noticed to appear a violation of Florida Court Rules)** and the Court having heard arguments of the counsel for Northern Trust Bank of Florida, N.A; it is **(*Court does not even mention why the Defendants did not appear.)**

Ordered that the motion is granted. The Court finds that on the face of the claimed removal it is shown that there is no colorable claim and thus this Court need not recognize the removal See Hunnewell v. Palm Beach County 786 So 2d 4 (Fla 4th DCA 2001) Rev Denied 817 So. 2d 847 (Fla.2002) Without limitation on any other grounds on which removal is invalid it is plain for at least the following reasons it is invalid:

1- On the defendants in this cause, Gloria Kates, is a resident of Palm Beach County, Florida and under the plain jurisdictional requirements for an action to be removable, it must be shown that none of the defendants are citizens of Florida (See 1441 (b) USCA.**(* in the judgment order of January 27, 2005 this Court clearly states that Gloria Kates is not a defendant, but a co-plaintiff. A false defendant may not be used to thwart removal)**

2- The place for removal, if removal were proper would be the United States District Court for the Southern District of Florida and not in the Federal District Court for the Eastern District of New York (See 1446(a) USCA) **(* when no basis for jurisdiction in Florida exists because of a fraudulently filed lawsuit, removal can take place to the state of proper jurisdiction.)**

3- The Notice of removal must be filed within 30 days after the service of the Complaint. Service was made on October 30, 2004 and the Notice of Removal was not filed in Federal District Court until December 6, 2004 (See 1446 (b) USCA) **(* service was illegal upon an executor in New York State unless and until he is appointed by the court. Appointment took place on December 17, 2004.) Also, Florida rules require that service in another state conform to the laws and rules of that state.)**

The Court retains jurisdiction over this cause and pending matters shall proceed as scheduled.

(*notes in paranthesis are Petitioner's notes and do not appear in the order)

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida on this 23rd day of December 2004.

/s/ Karen L. Martin
KAREN L. MARTIN
Circuit Court Judge

APPENDIX H

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL. 33402.

May 24, 2006

CASE NO: 4DO6-1679
L.T. No: 502004CP004511XXXXMB

PHILIP BARASH AND SANDRA BARASH	v.	NORTHERN TRUST BANK OF FLORIDA, N.A. ET AL
Appellant/Petitioners		Appellee/Respondent

BY ORDER OF THE COURT:

Appellant, Philip Barash is advised that the Estate must be represented by counsel and that the "Executor" may not file legal pleadings in the court on behalf of the Estate.

I HEREBY CERTIFY that the foregoing is a true copy of the original order.

Served:
Sharon R. Bock, Clerk Sandra Barash, Philip Barash
Julie Ferguson, James G. Pressly, Jr.

cd

/s/ Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal **SEAL**

*** If this "order" holds true, then the entire action of this case must be vacated, attorney fees returned to the trust, based upon failure to honor due process clause of the United States Constitution, conducting an action against an unrepresented party, and all pleadings voided.**